



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE257

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, Shark Research Fishery, and Chartering Permits; Letters of Acknowledgment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), Shark Research Fishery Permits, and Chartering Permits for Atlantic highly migratory species (HMS) in 2016. Exempted fishing permits and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks (collectively known as HMS) from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection, bycatch research, and public display. Chartering permits allow the collection of HMS on the high seas or in the Exclusive Economic Zone of other nations under certain conditions. Generally, EFPs and related permits will be valid from the date of issuance through December 31, 2016, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or

before *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Comments may be submitted by any of the following methods:

- Email: *nmfs.hms.efp2016@noaa.gov*. Include in the subject line the following identifier: 0648-XE257.
- Mail: Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 427-8503

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary for the collection of HMS for scientific research; the acquisition of information and data; the enhancement of safety at sea; the purpose of collecting animals for public education or display; and the investigation of bycatch, economic discards and regulatory discards. These permits exempt permit holders from regulations (e.g., fishing seasons, prohibited species, authorized gear, closed areas, and minimum sizes) that may otherwise prohibit the collection of HMS. Collection under EFPs, SRPs, LOAs, display, shark research fishery, and chartering permits represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate and applicable. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and/or species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted public display and educational activities with respect to Atlantic HMS. Since the Magnuson-Stevens Act does not define fishing to include scientific research, scientific research is exempt from this statute, and NMFS does not issue EFPs for bona fide research activities (e.g., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (e.g., most species of sharks) and not under ATCA. NMFS generally does not consider recreational or commercial vessels to be bona fide research vessels. However, if the vessels have been contracted only to conduct research and not participate in any commercial or recreational fishing activities during that research, NMFS may consider those vessels as bona fide research platforms while conducting the specified research. For example, in the past, NMFS has determined that commercial pelagic longline vessels assisting with population surveys for sharks may be considered “bona fide research vessels” while engaged only in the specified research. NMFS requests copies of scientific research plans for these activities and acknowledges the activity by issuing an LOA to researchers to indicate that the proposed activity meets the definition of research. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark

species, and collecting and sampling sharks caught during trawl surveys for life history studies.

Scientific research is not exempt from regulation under ATCA. NMFS issues SRPs which authorize researchers to collect HMS from bona fide research vessels for collection of species managed under this statute (e.g., tunas, swordfish, billfish, and some species of sharks). One example of research conducted under SRPs consists of scientific surveys of HMS conducted from NOAA research vessels. EFPs are issued to researchers collecting ATCA and Magnuson-Stevens Act-managed species and conducting research from commercial or recreational fishing vessels. NMFS regulations concerning the implantation or attachment of archival tags in Atlantic HMS require scientists to report their activities associated with these tags. Examples of research conducted under EFPs include deploying pop-up satellite archival tags (PSAT) on billfish, sharks, and tunas to determine migration patterns of these species; conducting billfish larval tows to determine billfish habitat use, life history, and population structure; and determining catch rates and gear characteristics of the swordfish buoy gear fishery.

NMFS is also seeking public comment on its intent to issue display permits for the collection of sharks and other HMS for public display in 2016. Collection of sharks and other HMS sought for public display in aquaria often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species, and collection of fish below the regulatory minimum size. NMFS established a 60-metric ton (mt) whole weight (ww) (approximately 3,000 sharks, although conversion factors, and thus final numbers, differ by species) quota for the public display and research of sharks (combined) in the final Fishery Management Plan for Atlantic Tunas, Swordfish, and

Sharks (1999 FMP). Out of this 60 mt ww quota, 1.4 mt ww is set aside to collect sandbar sharks under a display permit and 1.4 mt ww is set aside to collect sandbar sharks under EFPs, created in 2008 under Amendment 2 to the 2006 Consolidated HMS FMP. Public display of dusky sharks is prohibited; NMFS considers collection of dusky sharks for research under an EFP and/or SRP on a case-by-case basis. NMFS has also established separate large coastal and sandbar shark quotas for the shark research fishery. The environmental effects of these quotas have been analyzed in conjunction with other sources of mortality in the 2006 Consolidated HMS FMP and its amendments, and NMFS has determined that harvesting this amount for public display and scientific research will not have a significant impact on shark stocks. The number of sharks harvested for display and research, other than the shark research fishery, has remained under the annual 60-mt ww quota every year since establishment of the quota. In 2015, permits issued by NMFS requested approximately 26 percent of the 60 mt ww quota for sharks. Amendment 3 to the 2006 Consolidated HMS FMP established a separate set-aside quota of 6 mt ww for smoothhound sharks (i.e., smooth dogfish, Florida smoothhounds, and Gulf smoothhounds) taken for research purposes, which would be in addition to the overall 60-mt ww quota for the public display and research of all sharks. NMFS expects Amendment 9 to the 2006 Consolidated HMS FMP to be finalized before the beginning of 2016, which would establish an effective date for the research set-aside for smoothhound sharks. Once Amendment 9 is finalized, NMFS expects to issue EFPs and related permits for the public display and research of smoothhound sharks, as appropriate.

The majority of EFPs and related permits described in this annual notice relate to scientific sampling and tagging of Atlantic HMS, within existing quotas, the impacts of which have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS. NMFS intends to issue these permits without additional opportunity for public comment beyond what is provided in this notice. Occasionally, NMFS receives applications for research activities that were not anticipated, or for research that is outside the scope of general scientific sampling and tagging of Atlantic HMS, or rarely, for research that is particularly controversial. Should NMFS receive such applications, NMFS will provide additional opportunity for public comment.

In 2016, NMFS expects to once again receive an application for an EFP from the owner of an Atlantic bluefin tuna purse seine vessel. A 2015 application requested an exemption from the annual incidental purse seine retention limit on the harvest of large medium Atlantic bluefin tuna. On October 27, 2014, NMFS published a notice of intent (79 FR 63896) requesting comments on the application and the issuance of a permit. NMFS did not receive any comments in response to the issuance of the 2015 EFP, and on June 5, 2015, NMFS issued an EFP to the vessel owner. The 2015 EFP contained the following terms and conditions: (1) mandatory observer coverage on all trips, (2) all dead bluefin tuna at haul back must be available to observers for sampling, (3) sub-legal bluefin tuna that are released alive and in good condition will not be counted against the vessel's quota, (4) any sub-legal bluefin tuna that are dead at haulback may not be released by the vessel operator, and (5) only the observer has discretion over dead sub-legal fish that may be released without sampling. Compared to the dead discards that occurred in 2013,

while fishing under an EFP in 2014 and 2015, the overall reduction in dead discards was 69 and 64 percent, respectively. NMFS expects to receive a similar request for an EFP in 2016 and requests comments, via this notice, on the continuation of such an EFP with similar terms and conditions. If the application from the purse seine vessel requests exemptions that are significantly different than those provided in the 2014 and 2015 permits, NMFS will provide additional opportunity for public comment.

NMFS is also requesting comments on chartering permits considered for issuance in 2016 to U.S. vessels fishing for HMS while operating under chartering arrangements with foreign countries. NMFS has not issued any chartering permits since 2004. A chartering arrangement is a contract or agreement between a U.S. vessel owner and a foreign entity by which the control, use, or services of a vessel are secured for a period of time for fishing for Atlantic HMS. Before fishing under a chartering arrangement, the owner of the U.S. fishing vessel must apply for a chartering permit. The vessel chartering regulations can be found at 50 CFR 635.5(a)(4) and 635.32 (e).

In addition, Amendment 2 to the 2006 Consolidated HMS FMP implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing permit program. Research fishery permit holders assist NMFS in collecting valuable shark life history data and data for future shark stock assessments. Since the shark research fishery was established in 2008, the research fishery has allowed for: the collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help

reduce fishery interactions through bycatch mitigation; and the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks and collection of hook-timer and pop-up satellite archival tag information to determine at-vessel and post-release mortality of dusky sharks. Fishermen who wish to participate must fill out an application for a shark research permit under the exempted fishing program. Shark research fishery participants are subject to 100-percent observer coverage in addition to other terms and conditions (which in the past have included hook and soak time limitations and a requirement to land all dead sharks, unless the shark is a prohibited species). A **Federal Register** notice describing the specific objectives for the shark research fishery in 2016 and requesting applications from interested and eligible shark fishermen is expected to publish in the near future. NMFS requests public comment regarding NMFS' intent to issue shark research fishery permits in 2016 during the comment period of this notice.

The authorized number of species for 2015, as well as the number of specimens collected in 2014, is summarized in Table 1. The number of specimens collected in 2015 will be available when all 2015 interim and annual reports are submitted to NMFS. In 2014, the number of specimens collected was less than the number of authorized specimens for all permit types.

In all cases, mortality associated with an EFP, SRP, Display Permit, or LOA (except for larvae) is counted against the appropriate quota. NMFS issued a total of 37 EFPs, SRPs, Display Permits, and LOAs in 2014 for the collection of HMS and a total of 5 shark research fishery permits. As of October 29, 2015, NMFS has issued a total of 35 EFPs, SRPs, Display Permits, and LOAs and a total of 7 shark research fishery permits.

Table 1. Summary of HMS Exempted Fishing Permits Issued in 2014 and 2015, other than shark research fishery permits. (“HMS” refers to multiple species being collected under a given permit type.)

	2014					2015		
Permit Type	Permits Issued	Authorized Fish (Num)	Authorized Larvae (Num)	Fish Kept/Discarded Dead (Num)	Larvae Kept (Num)	Permits Issued	Authorized Fish (Num)	Authorized Larvae (Num)
EFP								
HMS	3	188	0	57	0	4	207	0
Shark	10	3,145	0	168	0	11	1,192	0
Tuna	3	1,677	0	0	0	3	928	0
Billfish	0	35	1,000	-	-	-	-	-
SRP								
HMS	3	941	0	9	0	1	480	0
Shark	2	2,008	0	166	0	4	875	0
Tuna	2	80	2000	0	0	1	60	0
Display								
HMS	3	94	0	5	0	1	67	0
Shark	3	121	0	29	0	3	114	0
Total	29	8,289	3,000	434	0	28	3,923	0
LOA*								
Shark	8	2,770	0	1,633	0	8	2,205	0

*LOAs are issued for bona fide scientific research activities involving non-ATCA managed species (*e.g.*, most species of sharks). Collections made under an LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permittees are encouraged to report all fishing activities in a timely manner.

Final decisions on the issuance of any EFPs, SRPs, Display Permits, Shark Research Fishery Permits, and Chartering Permits will depend on the submission of all

required information about the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits issued any prior violations of marine resource laws administered by NOAA, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP, the 2006 Consolidated HMS FMP and its amendments, 2012 Swordfish Specifications, and 2015 Bluefin Tuna Specifications.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: October 29, 2015.

Emily H. Menashes,
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National Marine Fisheries Service.

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